

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
)  
Implementation of the Subscriber )  
Carrier Selection Changes )  
Provisions of the Telecommunications )  
Act of 1996 )  
)  
Policies and Rules Concerning )  
Unauthorized Changes of )  
Consumers' Long Distance Carriers )

CC Docket No. 94-129

Texas Office of Public Utility Counsel's  
Reply Comments

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## **EXECUTIVE SUMMARY**

The FCC has proposed modifications that greatly enhance the protection afforded the consumer against unauthorized carrier changes (“slamming”). TOPC commends the FCC on its proposal, and in light of the comments filed by parties on the Further Notice of Proposed Rulemaking, offers its suggestions regarding several areas including:

- (1) Apply verification rules to all carriers, but establish rules prohibiting discriminatory practices by ILECs when executing carrier change requests.
- (2) Eliminate the welcome package option because it requires affirmative action by the customer to retain its preferred carrier.
- (3) Require verification of all carrier change requests.
- (4) Allow customers to protect themselves against slamming with PC freezes, but establish rules prohibiting the implementation of anti-competitive obstacles by LECs.
- (5) Adopt liability procedures so that the customer is made whole as quickly as possible.
- (6) Address the evidentiary standard for resale notification in a separate proceeding.
- (7) Maintain the efficacy of non-conflicting state regulations prohibiting slamming.

**REPLY COMMENTS OF THE  
TEXAS OFFICE OF PUBLIC UTILITY COUNSEL**

**I.  
INTRODUCTION**

Now comes the Texas Office of Public Utility Counsel (TOPC) and files these reply comments on the Further Notice of Proposed Rulemaking released by the Federal Communications Commission (FCC) on July 15, 1997, regarding the selection of telecommunications utilities.

**II.  
REPLY COMMENTS ON THE FCC'S PROPOSED AMENDMENTS  
TO 47 C.F.R. §64.1100 *et seq.***

**A. Application of the Verification Rules to All Telecommunications Carriers**

TOPC wholly supports the position advocated by many of those filing comments that all carriers should be subject to §258 verification rules.<sup>1</sup> With regards to this issue, several parties filing comments express concern regarding the potentially anti-competitive position that the incumbent local exchange carrier (ILEC) will assume once full competition is introduced at the local level.<sup>2</sup> To address the potential for discriminatory treatment at the hands of the ILEC, some parties suggest that a completely separate third party execute all carrier change requests.<sup>3</sup> However, this is the most expensive solution for a problem that has yet to be realized. Because the costs will be ultimately borne by the customer, TOPC recommends that the FCC first implement less costly methods that will encourage competition while also protecting the customer. Therefore, the TOPC recommends that the FCC establish a deadline of five business days for the LEC to comply with the change request submitted by any carrier. Delay past the

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<sup>1</sup> Entities supporting the application of verification rules to all carriers include, but are not limited to: the National Association of Attorney Generals; Billing Information Concepts Corp.; AT&T; GTE Service Corporation; MCI; United States Telephone Association; and Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell.

<sup>2</sup> See e.g. BIC Comments at 4 "...existing verification rules establish insufficient safeguards against possible slamming by [ILECs]..."; Sprint Comments at 11 "The ILECs...do not always properly execute [carrier change] orders, and their errors contribute to the slamming problem..."; MCI Comments at n. 4 "...the rules must recognize the unique position of the [ILEC] as competition in its nascent stages."

<sup>3</sup> MCI Comments at 25; Sprint at 8.

five-day deadline will result in the LEC being deemed an unauthorized carrier subject to the administrative penalties contained in this Act. The five-day deadline not only protects the customer's ability to freely and expeditiously change telecommunications carriers, but also thwarts any anti-competitive delay tactic an ILEC may employ to discriminate against non-affiliate carriers.

**B. Elimination of the "Welcome Package" Verification Option**

AT&T states in its comments that there is a "clear-cut and controlling difference" between the welcome package option and a negative-option LOA because the welcome package is sent only after customer contact has resulted in oral authorization for the carrier change.<sup>4</sup> However, AT&T misses the fundamental problem underlying slamming allegations.

Unauthorized carrier changes occur in the absence of customer contact. One of the few protections consumers have against slamming is the requirement that the unauthorized carrier produce evidence that the customer did in fact affirmatively authorize the carrier change. If carriers are allowed to use the welcome package option, this requirement is obviated and slammers can assert the customer's silent acquiescence as defense. When the customer complains that she has been slammed, the unauthorized carrier avoids producing any evidence that the customer affirmatively selected the carrier by pointing to the welcome package. There will be no evidence of the customer's "oral authorization" so the only "evidence" that the customer actually agreed to the carrier change is the *absence* of the return post card declining to change carriers. Thus, exactly like the negative-option LOA, the customer will be forced into the impossible and illogical position of proving a negative - that the request to change carriers that was never made was in fact, never made.

AT&T further supports its position by alleging that no evidence exists of "even a single instance in which the customer has been slammed in the manner described..."<sup>5</sup> Even assuming that this is the case, the welcome package remains a loophole that

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<sup>4</sup> AT&T at 4-5.

<sup>5</sup> AT&T at 5.

unscrupulous carriers can and will exploit. Elimination of the welcome package option is warranted because of the overwhelming potential for abuse especially now that more stringent anti-slamming provisions are being adopted.

Eliminating the welcome package option is prudent in light of the fact that three cost-effective verification options, requiring affirmative evidence of the customer's choice, remain available to all carriers.<sup>6</sup> Parties supporting the use of the welcome package option have offered no evidence justifying its continued use in light of the overwhelmingly negative consequences to consumers.

If the welcome package option is not eliminated, TOPC supports the modification suggested in the comments of the National Association of Attorney General that the welcome package requires an affirmative response prior to making a carrier change.<sup>7</sup> This modification ensures adequate consumer protection by requiring an affirmative post-sale confirmation similar to the three other verification options.

### **C. Application of the Verification Rules to In-Bound Calls**

Similarly, the FCC has the opportunity to eliminate a major loophole existing under the current rules by extending existing verification procedures to customer-initiated "in bound" calls. Several parties filing comments assert that in-bound verification will result in delays and excessive costs.<sup>8</sup> United States Telephone Association (USTA) went so far as to say that requiring in-bound verification "patronizes" the consumer, ultimately "eroding his control over his choice of service providers."<sup>9</sup> TOPC strongly contests USTA's assertion. In-bound verification greatly increases the protection afforded the customer's choice of preferred carriers by ensuring that it is the customer's choice, and not an unauthorized change made by an unscrupulous carrier.

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<sup>6</sup> In fact, based upon its experience using third party verification (TPV) exclusively to verify change requests, MCI has found that TPV is a cost-effective method to ensure customer satisfaction. MCI at n. 11.

<sup>7</sup> NAAG at 5.

<sup>8</sup> AT&T at 21-23; Sprint at 30-31; SBC at 8; USTA at 4.

<sup>9</sup> USTA at 5.

In-bound verification is vital to §258 in order to effectively combat slamming problems industry-wide. Strong economic disincentives will discourage slamming, but the FCC must also ensure that there are no safe havens for slammers. For example, slammers will defend carrier changes by claiming that the changes were made pursuant to customer-initiated requests, thus transferring the onerous burden to customers to prove a negative. Failing to require in-bound verification also permits several questionable sales tactics to continue. Verifying all change requests should eliminate the problems associated with customers being switched by entering a sweepstakes or by simply calling the carrier to obtain information about its services.

MCI already employs third party verification for virtually all of its carrier change requests.<sup>10</sup> Based upon its experience as a major telecommunications utility, MCI has found that verification of all change requests is not only cost-effective, but has greatly increased customer satisfaction while decreasing complaints.<sup>11</sup> Therefore, TOPC recommends that the FCC require in-bound verification as beneficial to both the consumer as well as the industry.

If the FCC decides not to require in-bound verification, TOPC supports the recommendation of GTE that the customer's in-bound request to switch carriers be recorded.<sup>12</sup> The tape-recording can then be used to overcome the presumption that the customer has been slammed. This option protects the consumer by establishing some record of the request and is a reasonable compromise that allows the change to be made expeditiously without requiring additional contact with the customer.

#### **D. Verification and Preferred Carrier Freezes**

Several parties filing comments question the efficacy of preferred carrier (PC) freezes in light of their potential use as anti-competitive obstacles for carriers entering the market. While some consideration should be given to the standards governing PC freezes, the tremendous benefit to consumers strongly supports the customer's right to

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<sup>10</sup> MCI at n. 11.

<sup>11</sup> MCI at 4.

<sup>12</sup> GTE at 10.

request a PC freeze. A PC freeze may be one of the customer's strongest weapons against slamming because the freeze prevents an unauthorized change from ever occurring, rather than punishing the slammer only after the change is discovered.

PC freezes do not limit in any way the ability of competing carriers to provide information to the customer regarding its services, nor does it prevent the customer's capacity to ultimately initiate a carrier change. However, commenters note that ILECs may have the incentive to delay initiating or removing a freeze in order to further their competitive advantage.<sup>13</sup> In light of these concerns, TOPC supports the requirement suggested by Sprint that the ILEC maintain neutral procedures regarding PC freezes so that freezes requested by competing carriers are administrated exactly the same as those requested by the ILEC or an affiliate of the ILEC.<sup>14</sup> Several parties also express apprehension regarding the unduly burdensome procedures to remove a freeze so that the customer may change carriers.<sup>15</sup> TOPC supports modifications that would permit a PC freeze to be removed from a customer account by a three-way call with the customer, rather than a written request, so that the carrier change may be made as quickly as possible.

The TOPC recommends that the FCC adopt the requirement that all existing carriers educate their customers by mail or advertisement regarding the customer's right to request a PC freeze. TOPC further recommends that the existing carrier be permitted to provide its customers a response form printed with standard language approved by the FCC that, once signed and returned to the carrier, will immediately effectuate a PC freeze. The signed form serves as evidence of the customer-initiated request, similar to a traditional LOA, thus eliminating the need for other verification procedures.

#### **E. Liability**

Most parties filing comments, including TOPC, agree upon the basic structure of liability in slamming cases: 1.) The unauthorized carrier shall remit all customer

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<sup>13</sup> Sprint at n. 30; MCI at 13-14.

<sup>14</sup> Sprint at n. 30.

<sup>15</sup> MCI at 14.



payments to the authorized carrier; 2.) The authorized carrier shall bill the customer according the rate charged had the slamming never occurred; 3.) The authorized carrier shall remit any excess payment to the customer and credit any lost premiums to the customer's account; and 4.) The unauthorized carrier shall pay for any usual and customary fees associated with returning the customer to the authorized carrier. If the customer has not yet paid the unauthorized carrier, then the unauthorized carrier shall transfer billing records to the authorized carrier so that it may bill the customer under its rates.

Several parties answer questions regarding the restoration of the customer's lost premiums. TOPC fully supports the contention that once the authorized carrier has been fully reimbursed by the slammer, the customer shall be credited for all lost premiums immediately because the authorized carrier is responsible for the premiums absent the slamming.

TOPC suggests that the FCC adopt a timeline of no later than ten business days for transfer of billing records from the unauthorized carrier to the authorized carrier. The authorized carrier shall restore all lost premiums and remit any excess payments to the customer no later than one billing cycle after receipt of the billing records, so that the customer may be made whole as quickly as possible. TOPC urges that under no circumstances shall the customer be required to pay a rate other than the one she contracted to pay her authorized carrier. In addition, the customer shall never be required to pay for any service (e.g. call waiting) that she had not originally contracted to receive from her authorized carrier, even if she was provided with additional services by the slammer.

**F. Evidentiary Standard Related to Lawfulness of a Resale Carrier's Change in Underlying Network Provider**

TOPC agrees with Billing Information Concepts Corporation's submittal that the reseller's failure to disclose a change in the underlying network provider is not a slamming issue and should not be addressed in this proceeding.<sup>16</sup> If the FCC adopts rules

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<sup>16</sup> BIC at 8-9.

regarding this issue in this proceeding, the FCC should require the telecommunications utility providing service to be clearly named on the first page of each bill sent to the customer so that the customer may ensure that service is provided by her contracted company. This requirement provides the highest degree of consumer protection against slamming because the customer is able to easily verify each month that she is receiving services from the telecommunications utility she has contracted with to be her provider. Conversely, customer notification regarding a change in underlying carriers will only lead to confusion and create the false impression that the customer had been slammed.

**G. §258 Working In Conjunction With State Laws**

AT&T asks that the FCC preempt state verification regulations because it cannot “simultaneously comply with both these rules and the Commission’s existing procedures.”<sup>17</sup> However, the “egregious” example given by AT&T to explain its quandary is the California law that requires additional confirmation to accompany a written authorization for a customer change request.<sup>18</sup> By complying with California’s state regulations, AT&T is able to simultaneously comply with the FCC’s verification requirements. AT&T’s example is not one of inconsistent, and thus unenforceable, requirements, but instead demonstrates how a state has adopted additional regulations to address a particular problem encountered by its citizens, i.e. forged or deceptively induced LOAs.

State regulation serves as an essential mechanism to combat slamming. TOPC supports the National Association of Attorney General’s recommendation that the FCC adopt “an explicit expression of the Commission’s intent not to preempt state measures that provide for similar or additional protections or state enforcement actions...”<sup>19</sup> Section 258 was never meant to serve as the only regulatory mechanism governing slamming. Congress recognizes that state law enforcement policies, regulatory measures

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<sup>17</sup> AT&T at 37.

<sup>18</sup> AT&T at n. 52.

<sup>19</sup> NAAG at 13.

and other remedies have all been crafted by state legislatures for particular problems encountered by consumers within its jurisdiction.

Dated: September 26, 1997

Respectfully submitted,

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A handwritten signature in cursive script, reading "Kristen Doyle", is written over a horizontal line.

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